

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 -----)
5 IN RE: NATIONAL) MDL No. 2804
6 PRESCRIPTION OPIATE)
7 LITIGATION) Case No.
8 -----) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES TO) Hon. Dan A. Polster
11 ALL CASES)
12 -----)

13 HIGHLY CONFIDENTIAL
14 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

15 VIDEOTAPED DEPOSITION OF
16 TOMSON GEORGE
17 January 14, 2019
18 Chicago, Illinois

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1 Q. That paragraph goes on to say, "In
2 July 2011, the Florida Surgeon General declared a
3 public health emergency based on the prescription
4 pill epidemic which results in an average of seven
5 overdose deaths per day in Florida."

6 Do you see that?

7 A. I do.

8 Q. Did you have an independent knowledge
9 prior to seeing this here that there was a public
10 health emergency declared in Florida back in
11 July of 2011?

12 A. I can't say I'm -- I knew of a July 2011
13 public health emergency, if that's what you're
14 asking.

15 Q. It goes down to paragraph 3. It says,
16 "Oxycodone is a dangerously addictive Schedule II
17 controlled substance."

18 Do you agree with that portion of that
19 sentence?

20 A. I don't know if that's how I'd
21 specifically characterize it. Oxycodone being a
22 Schedule II drug has addictive properties. But I
23 think that, you know, any drug could also be
24 dangerous, you know.

1 So, it's a matter of making -- it's what
2 pharmacists do also to make sure that they help
3 protect the patient so that when a prescription is
4 dispensed that it's done so in a safe manner.

5 Q. Okay? You said -- you said there that
6 any drug could be dangerous?

7 A. Sure.

8 Q. Is oxycodone the same as just any other
9 drug in your opinion?

10 A. I mean, it's classified by the DEA as a
11 Schedule II drug, which gives it a higher rating in
12 their scale as far as potential risk related to
13 addiction.

14 Q. Okay. Do you agree or disagree that
15 oxycodone is a dangerously addictive drug?

16 A. It can be an addictive drug, but I also
17 understand many people take it safely every day.

18 Q. Do you agree or disagree that we're in
19 the midst of a public health crisis related to
20 opioid abuse?

21 A. I think there is definitely a lot of
22 people impacted by the issue every single day.

23 Q. What do you mean by "impacted"?

24 A. There are people who do overdose from

1 controlled substance medications.

2 Q. Do you agree there is a lot of people
3 that are addicted to drugs such as oxycodone?

4 A. That's what I understand.

5 Q. With that backdrop, with that
6 understanding that a lot of people are addicted to
7 it, a lot of people I think you just said overdose
8 from it, do you agree or disagree that oxycodone is
9 a dangerously addictive Schedule II controlled
10 substance?

11 MR. BENSINGER: Asked and answered.

12 BY THE WITNESS:

13 A. I don't think I can categorically
14 subscribe to that statement as a...

15 BY MR. GADDY:

16 Q. That sentence goes on to say, "which is
17 known to be highly abused and diverted in the State
18 of Florida."

19 Do you see that?

20 A. Is that paragraph 2 still?

21 Q. Yeah. I'm sorry. It's the second half
22 of that first sentence. No, I'm sorry. We are in
23 paragraph 3 now.

24 A. I'm sorry.

1 Q. Let's read the whole sentence again.

2 It says, "Oxycodone is a dangerously
3 addictive Schedule II controlled substance which is
4 known to be highly abused and diverted in the State
5 of Florida."

6 Do you see that?

7 A. I do.

8 Q. We just spent a moment talking about the
9 first portion of that sentence. The second
10 portion, it says, "Oxycodone is known to be highly
11 abused and diverted in the State of Florida."

12 Do you agree with that sentence?

13 A. I don't --

14 MR. BENSINGER: Objection; foundation.

15 BY THE WITNESS:

16 A. I don't know if I have enough
17 information to completely agree with that sentence.
18 I've heard of that type of conversation.

19 BY MR. GADDY:

20 Q. Had you heard of that or were you aware
21 of that back in September of 2012 when this
22 document was published?

23 A. I could not say I was.

24 Q. Did anybody -- are you aware or do you

1 have any memory of anybody at Walgreens making you
2 aware of the information contained within that
3 sentence?

4 A. No one at Walgreens notified me of that
5 first sentence that you talked about.

6 Q. So, in the time period leading up to
7 this document, which is dated September 13, 2012,
8 do you have any understanding of any suspicious
9 order monitoring program that Walgreens had in
10 place on the distribution side?

11 A. It wouldn't be part of my job role, so
12 it would be hard for me to comment on. I mean...

13 Q. Is the answer no, that you don't have
14 any understanding of that, that we should talk to
15 other people about the suspicious order monitoring?

16 A. Yes, if that's your focus of the
17 question, I would not be the person to talk to
18 about that.

19 Q. What about on the pharmacy side, so the
20 dispensing side. What systems were in place to
21 allow pharmacies to monitor their dispensing
22 practices?

23 A. Which date would you like me to think
24 about?

1 Q. Again, this is in the time period
2 leading up to the date of this document, which is
3 September 2012, and what I'm asking is: What
4 policies or programs did Walgreens have in place on
5 the dispensing side to ensure that only valid,
6 appropriate, medically necessary prescriptions were
7 filled?

8 MR. BENSINGER: Objection; foundation.

9 BY THE WITNESS:

10 A. On the topic of dispensing controlled
11 substances, I think three things come to mind
12 around controlled substances that I was at least
13 familiar with to some level.

14 One is Walgreens' good faith dispensing
15 policies and procedures. Second is I think as part
16 of the pharmacist drug utilization review, I think
17 there was a warning message, for example, if a
18 prescription was being refilled early and then,
19 third, as it relates to prescription drug
20 monitoring reporting.

21 BY MR. GADDY:

22 Q. So, as far as programs that were in
23 place to ensure that only appropriate and medically
24 necessary prescriptions were filled, you're

1 pointing us to three things: The good faith
2 dispensing program?

3 A. Um-hmm.

4 Q. The drug utilization review and any
5 prescription drug monitoring program, correct?

6 A. Yeah.

7 Q. Are these policies or procedures that
8 are in place within the pharmacies or are these
9 policies and procedures that give folks in the
10 business side of Walgreens the visibility to see
11 what's going on in their pharmacies?

12 MR. BENSINGER: Objection; foundation.

13 BY MR. GADDY:

14 Q. Let me strike that and ask that a
15 different way.

16 Are those pharmacy programs?

17 A. Yeah, the pharmacy -- the locations and
18 the pharmacists and technicians inside, those would
19 be the ones that are impacted by what I just called
20 out.

21 Q. Okay. And we'll look in a minute at
22 exactly when the Florida PDMP went into place. I
23 think it was 2011.

24 But prior to this date that we're

1 talking about, September 2012, how long do you
2 believe the good faith dispensing program had been
3 in place?

4 A. I don't know offhand, to be honest.

5 Q. Okay. And what about that drug
6 utilization review?

7 A. That -- I mean the concept of the system
8 checking for, you know, drug interactions,
9 including early refills, that's been there since
10 the day I was a pharmacist. I don't know the exact
11 timing, whether or not the early refill portion was
12 there from Day One or it came into effect at some
13 point during my time with Walgreens Company.

14 Q. But those are three programs or three
15 tools that were available to pharmacists during
16 this time period, correct?

17 A. Yeah, depending on the state and the
18 prescription drug monitoring program, I would
19 expect that the other two would apply as well.

20 Q. But would you agree that good faith
21 dispensing program that you are talking about here
22 had been in place for several years?

23 A. That's what I understand.

24 Q. If you go down to paragraph 4, still on

1 page 29, it says, "Since 2009, Walgreens' Jupiter
2 Florida distribution center has been the single
3 largest distributor of oxycodone products in
4 Florida. At about the same time as the abuse of
5 prescription drugs became an epidemic in Florida,
6 Walgreens' Florida retail pharmacies, supplied by
7 Respondent, commanded an increasingly large
8 percentage of the state's growing oxycodone
9 business."

10 Do you see that?

11 A. I do.

12 Q. Is that information that you were aware
13 of?

14 MR. BENSINGER: Objection; vague.

15 BY THE WITNESS:

16 A. I don't -- I mean, I'm not familiar with
17 the document and the statements that you just read
18 wouldn't have been something that I would have been
19 I think aware of in my role at the company.

20 BY MR. GADDY:

21 Q. It says, "In 2010, only three Walgreens
22 retail pharmacies were in the top 100 purchasers of
23 oxycodone within Florida. In 2011, 38 Walgreens
24 pharmacies made the top ten" -- excuse me -- "the

1 top 100 and six were in the top ten. Through
2 May 2012, 44 Walgreens pharmacies are in the top
3 100 oxycodone purchasers, all of them supplied by
4 Respondent."

5 Do you see that?

6 A. I do.

7 Q. Do you agree that there's a correlation
8 between the amount of opioids dispensed and the
9 amount that would have to be distributed to those
10 stores?

11 What I mean by that is the more drugs a
12 pharmacy dispense, the more drugs they're going to
13 have to order from a distribution center, correct?

14 A. That does make sense to me.

15 Q. Okay. You understand the information in
16 paragraph 4 to be talking about how Walgreens
17 stores within the State of Florida gained an
18 increasingly large percentage of the oxycodone that
19 was dispensed within the state?

20 A. I do read that here.

21 Q. During this time period, 2009, 2010,
22 2011, 2012, who at Walgreens would be monitoring
23 this rise in volume in oxycodone going to Florida?

24 MR. BENSINGER: Objection; foundation.

1 BY THE WITNESS:

2 A. I don't know of anyone that would be
3 specifically monitoring any increase in oxycodone
4 specifically.

5 BY MR. GADDY:

6 Q. Do you know of any department or piece
7 of software that would be monitoring such an
8 increase in volume?

9 MR. BENSINGER: Objection; compound,
10 foundation.

11 BY THE WITNESS:

12 A. I mean, it would be outside of my
13 general knowledge base in my role at the company
14 for me to know that type of information.

15 BY MR. GADDY:

16 Q. And at the time that this increase is
17 happening, the 2010 with three Walgreens pharmacies
18 in the top 100, 2011, 38 Walgreens pharmacies in
19 the top 100, and 2012, 44 Walgreens pharmacies in
20 the top 100, as far as oxycodone prescriptions go,
21 during that time period the good faith dispensing
22 program and the drug utilization review are in
23 effect, correct?

24 A. That's my understanding.

1 Q. And at least for some of that time
2 period the Florida PDMP is in effect?

3 A. If the Florida PDMP started in 2011,
4 that would be correct.

5 Q. Those programs, the good faith
6 dispensing, the drug utilization review and the
7 PDMP, again, assuming it's in place in a particular
8 state, would those same three programs be the same
9 safeguards that were in place regardless of what
10 state we're looking at?

11 A. I think two for sure and then the PDMP
12 if one was active in that state.

13 Q. Okay. So, the good faith dispensing and
14 the drug utilization review would have been the
15 safeguards in place in all 50 states and then
16 potentially a PDMP?

17 A. Yeah, around dispensing purposes,
18 correct.

19 Q. That would be the same answer if we're
20 talking about Ohio, correct?

21 A. Yep.

22 Q. Same answer if we're talking about West
23 Virginia?

24 A. I don't -- well, West Virginia,

1 depending on the timing, we also have some of those
2 ID requirements. I forgot when that was
3 implemented as well. That could have been an
4 additional element.

5 Q. If you look at paragraph 5, it says,
6 "According to DEA records, in 2011, Walgreens
7 operated 7,862 retail pharmacies in the
8 United States. Sixteen of the top 25 largest
9 Walgreens retail oxycodone purchasers, included the
10 top 6 purchasers" -- excuse me -- "including the
11 top 6 purchasers, were in Florida and supplied by
12 Respondent. The following table shows these six
13 stores and their yearly oxycodone purchases for
14 2009 through 2011."

15 Do you see that and then do you also see
16 the chart on the following page?

17 A. I do.

18 Q. Okay. And do you understand the
19 information that this -- that this -- that this
20 chart is relaying and how it's set up as far as the
21 store location in the left-hand column and then the
22 oxycodone purchases by dosage unit for each of the
23 three years in the next three columns?

24 A. Yeah, I do see those headings.

1 Q. And for the first store there in Hudson,
2 Florida, it looks like in 2009 they purchased
3 388,000 dosage units of oxycodone.

4 Do you see that?

5 A. Yes, I do.

6 Q. And the following year, 2010, they
7 purchased 913,000 dosage units, correct?

8 A. I see that.

9 Q. And in 2011, that same store purchased
10 over 2.2 million dosage units of oxycodone,
11 correct?

12 A. I do see that.

13 Q. Would you agree with my very rough math
14 that it looks like that's approximately a 5 times
15 increase in oxycodone purchases from 2009 to 2011?

16 A. In that range, yeah.

17 Q. And that occurred while this pharmacy
18 had a good faith dispensing program, correct?

19 A. Again, I don't remember exactly which
20 year the good faith dispensing policy started, but
21 at some point I would expect that would be in
22 place.

23 Q. This occurred while this pharmacy had
24 the drug utilization review, correct?

1 A. That's correct.

2 Q. And assuming the PDMP went into place in
3 2011, at least a portion of it had the benefit of
4 the PDMP also?

5 A. That makes sense.

6 Q. If you look at the second entry there
7 for the Fort Myers store, 3099, you see that in
8 2009 they had 95,000 purchases of -- or excuse
9 me -- 95,000 dosage units of oxycodone that they
10 purchased, correct?

11 A. I do.

12 Q. In 2010, they purchased 496,000 dosage
13 units of oxycodone, correct?

14 A. I do.

15 Q. And, again, in 2011, it looks like they
16 purchased over 2.1 million dosage units of
17 oxycodone.

18 Do you see that?

19 A. I do see that.

20 Q. And, again, just using very, very rough
21 math, would you agree that's approximately a 20
22 times increase in the number of oxycodone dosage
23 units being purchased from 2009 to 2011?

24 A. In that range, yes.

1 Q. And, again, this would have been while
2 Walgreens good faith dispensing program and the
3 drug utilization review and at least a little bit
4 of the prescription drug monitoring program were in
5 place, correct?

6 A. That is correct.

7 Q. I promise we won't look at all of them,
8 but this will be the last one we do.

9 But do you see No. 3, store 06997 for
10 Oviedo, Florida, in 2009 they ordered 80,000 dosage
11 units of oxycodone?

12 A. I see that.

13 Q. And in 2010 that went up to 223,000. Do
14 you see that?

15 A. I do see that.

16 Q. And that in 2011 it went up to over
17 1.6 million dosage units of oxycodone.

18 Do you see that?

19 A. I do.

20 Q. About how many times did those -- the
21 dosage unit of oxycodone purchased increased from
22 '09 to '11 with that particular store?

23 MR. BENSINGER: Objection; vague.

24 BY THE WITNESS:

1 A. Are you asking me to divide 1.6 million
2 by 80,000 roughly?

3 BY MR. GADDY:

4 Q. Roughly 16-time increase. Does that
5 sound about right?

6 A. Yeah, I -- I don't want to get hung up
7 on math, but it's an increase.

8 Q. You've got no reason to dispute at least
9 a 16-time increase in oxycodone dosage units going
10 to this particular Walgreens pharmacy from 2009 to
11 2011, do you?

12 A. Yes.

13 Q. And, again, just like the other two,
14 this would be while Walgreens' good faith
15 dispensing program was in place, while the drug
16 utilization review was in place and at least a
17 portion of it would have been while the Florida
18 PDMP was in place, correct?

19 A. That's correct.

20 Q. Did you, prior to us looking at this
21 information in this chart just now within this
22 Order to Show Cause that was issued by the DEA, did
23 you have any understanding that this amount of
24 oxycodone and this much of an increase of oxycodone

1 was going to Walgreens pharmacies during this time
2 period?

3 A. I was not familiar with this extent in
4 2012, if that's what you're asking.

5 Q. Did anybody with Walgreens ever sit down
6 with you or are you aware of them sitting down with
7 anybody else within Walgreens and saying, "This is
8 what happened in these situations in Florida. We
9 made mistakes. Let's learn from these mistakes and
10 put some corrective actions in place"?

11 MR. BENSINGER: Objection; compound.

12 BY THE WITNESS:

13 A. And there is a lot there.

14 MR. BENSINGER: Vague.

15 BY THE WITNESS:

16 A. But no one has reviewed these statistics
17 with me during my time at Walgreens in 2012, for
18 example. Whether or not they've had conversations
19 with other people, I don't know if I could speak to
20 that.

21 BY MR. GADDY:

22 Q. One of the areas that you had some
23 significant involvement in at Walgreens is the
24 prescription drug monitoring programs, correct?

1 A. That is correct.

2 Q. And you agree that, and we'll look at
3 the exact date in just a minute I promise, but I'll
4 represent to you that it's in 2011, one goes into
5 effect in the State of Florida.

6 A. Okay.

7 Q. You agree that Florida had a PDMP?

8 A. Yes.

9 Q. And has one today?

10 A. Yes.

11 Q. Did anybody ever come to you with these
12 numbers at Walgreens and ask you, "How are we
13 getting these increases in oxycodone prescriptions
14 when Florida's implemented a prescription drug
15 monitoring program"?

16 MR. BENSINGER: Objection.

17 BY THE WITNESS:

18 A. I don't --

19 MR. BENSINGER: Misleading.

20 BY THE WITNESS:

21 A. I don't think anyone would have that
22 type of conversation with me for a couple different
23 reasons because I think they are two separate
24 pieces.

1 When pharmacies report into the
2 prescription drug monitoring program there is no --
3 it just goes into the State's database. So, the
4 State would probably have greater visibility into
5 that type of information. So, I wouldn't expect
6 someone to be actively using that data to monitor
7 the extent of any dispensings described in this
8 chart.

9 BY MR. GADDY:

10 Q. Okay. Walgreens' pharmacists in Florida
11 have access to the PDMP data in the State of
12 Florida, correct?

13 A. Yeah, they have access to it, correct,
14 yep.

15 Q. Are the Florida Walgreens pharmacists
16 encouraged to utilize that database to see whether
17 or not there are large increases in opioids being
18 dispensed by their pharmacy?

19 MR. BENSINGER: Objection; foundation.

20 BY THE WITNESS:

21 A. That's not how a database is used by a
22 pharmacist, generally speaking. You would as a
23 pharmacist, upon receiving a prescription, if there
24 is any issues, concerns raised during your review

1 or if there is a state law, rule that requires
2 otherwise on a case-by-case basis, you would be
3 looking at a specific patient and looking at their
4 controlled substance history for any trends of
5 misuse or overutilization.

6 BY MR. GADDY:

7 Q. So, the answer is no, Walgreens
8 pharmacists are not encouraged to look at the PDMP
9 to determine whether or not their particular
10 pharmacy or neighboring pharmacies are seeing a
11 large increase in the dispensing of controlled
12 substances?

13 MR. BENSINGER: Objection; foundation.

14 BY THE WITNESS:

15 A. Walgreens pharmacists are -- have access
16 to the PDMP to review specific patients
17 information. You can't view other pharmacies'
18 information in that database.

19 BY MR. GADDY:

20 Q. If you will turn for me, please, to
21 page 39 down at the bottom of the page.

22 Do you see up at the top of the page it
23 says, "In view of the foregoing"? Do you see where
24 I am?

1 A. I do see that.

2 Q. It says, "In view of the foregoing, and
3 based on information before the agency as of the
4 issuance of this notice, it is my preliminary
5 finding pursuant to certain statutes that
6 Walgreens' continued registration is inconsistent
7 with the public interest."

8 Do you see that?

9 A. I do.

10 Q. It goes on to say that "Under the
11 summarized facts and circumstances described
12 herein, it is also my preliminary finding,
13 significantly in light of the rampant and deadly
14 problem of prescription controlled substance abuse
15 in Florida, that Respondent's continued
16 registration while these proceedings are pending
17 constitutes an imminent danger to the public health
18 and safety."

19 Do you see that?

20 A. I do.

21 Q. It says, "Accordingly, pursuant to the
22 provisions of certain statutes and regulations,
23 that the DEA Certificate of Registration," and it
24 gives the number, "is hereby suspended, effective

1 immediately."

2 Do you see that?

3 A. I do.

4 Q. Did you have an understanding that the
5 DEA suspended the ability of the Jupiter
6 distribution center to distribute any controlled
7 substances?

8 MR. BENSINGER: Objection; vague.

9 BY THE WITNESS:

10 A. At some point I became aware of the
11 Jupiter distribution center was not allowed to
12 distribute controlled substances.

13 BY MR. GADDY:

14 Q. Okay. How did you become aware of that?

15 A. It's hard for me to really remember.
16 Again, it could have been through public, newspaper
17 headline type situation, article, could have been
18 through at work, you know, maybe general
19 conversation or something along those lines.

20 Q. You understand that the DEA is saying
21 here that Walgreens' ability to continue to
22 distribute opioids from the Jupiter distribution
23 center constitutes an imminent danger to the public
24 health and safety. Do you understand them to be

1 saying that?

2 A. I do read that here.

3 Q. Okay. Thinking back to those numbers of
4 oxycodone dosage units going to those different
5 pharmacies, do you agree with that statement that
6 pharmacies dispensing that much -- that many dosage
7 units of controlled substance is a danger to the
8 public safety?

9 MR. BENSINGER: Objection; calls for a legal
10 conclusion.

11 BY THE WITNESS:

12 A. I think that -- it looks like they ruled
13 based upon a number of factors that there was a
14 danger as stated here. You know, looking at the
15 numbers on their own, I don't know if I can
16 independently just draw that conclusion because
17 there may be other factors involved.

18 As pharmacies do dispense prescriptions,
19 it also relates to, you know, what prescriptions
20 are being dropped off at the pharmacy, what
21 patients, you know, what their needs are, you know,
22 general vicinity and things like that. That could
23 vary as well.

24 BY MR. GADDY:

1 Q. Okay. Is it normal for a pharmacy to
2 increase the amount of oxycodone that it's
3 dispensing by 5 times or 16 times or 20 times over
4 a two-year period?

5 MR. BENSINGER: Objection; foundation.
6 BY THE WITNESS:

7 A. I couldn't -- I couldn't tell you that.

8 BY MR. GADDY:

9 Q. Do you agree or disagree or have no
10 opinion on the DEA's statement here that Walgreens
11 continuing to be able to distribute controlled
12 substances from the Jupiter, Florida distribution
13 center constitutes an imminent danger to the public
14 health and safety?

15 A. I mean, reading the statement, obviously
16 that is a strong statement; and I would expect that
17 whatever findings that contributed to that
18 statement were based upon evidence that they would
19 review.

20 Q. You'll agree that the DEA is an
21 authority when it comes to controlled substances
22 and monitoring the diversion and drug abuse
23 associated with them?

24 A. They're an agency that's tasked with

1 regulating controlled substances, and part of that
2 is ensuring that controlled substances are I guess
3 safely distributed from one point to the patient at
4 the end of that.

5 Q. And when making decisions like the
6 statements that we have been looking at here in
7 this document, you would defer to the DEA and their
8 judgment on issues such as that?

9 MR. BENSINGER: Objection.

10 BY THE WITNESS:

11 A. I don't know if I would --

12 MR. BENSINGER: Foundation.

13 BY THE WITNESS:

14 A. -- go that far. I think that they are
15 charged with enforcing the regulations. And,
16 again, I don't know the particulars of this case or
17 what would have prompted them to come with that
18 specific statement.

19 BY MR. GADDY:

20 Q. You don't have any reason to disagree
21 with the statements the DEA is making here, do you?

22 A. I wouldn't know enough about the
23 situation to go one way or the other.

24 Q. Okay. So, this document we are looking

1 at was the Order to Show Cause. I want to spend
2 just a moment to look at the settlement agreement
3 itself. Okay. The settlement agreement is going
4 to be the very first page. We're just going to
5 start on the very first page of the document.

6 A. Page 1 of 349?

7 Q. Correct. Do you see above that there is
8 also a numbering that says page 1 of 13.

9 Do you see that?

10 A. Oh, I do.

11 Q. And so that's going to be the settlement
12 agreement.

13 You see there in the first paragraph at
14 the top of the page it says, "This Memorandum of
15 Agreement is entered into between the DOJ, the DEA
16 and Walgreens."

17 Do you see that?

18 A. I do read that.

19 Q. And you've never seen this, correct?

20 A. Not as part of my job or...

21 Q. Have you ever seen this ever?

22 A. Maybe during prep briefly.

23 Q. Okay. Outside of the context of this
24 deposition or any preparation you did for this

REDACTED



REDACTED



REDACTED



REDACTED

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REDACTED



REDACTED

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